

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 7, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DENEOVAL JOEL DERRICK,

Defendant - Appellant.

No. 22-6173
(D.C. No. 5:20-CR-00132-JD-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MORITZ, KELLY**, and **ROSSMAN**, Circuit Judges.

Deneoval Joel Derrick pleaded guilty pursuant to a plea agreement to possession of methamphetamine with intent to distribute and being a felon in possession of a firearm and ammunition. The district court sentenced Mr. Derrick to 180 months in prison after granting his request for a downward variance from the advisory guidelines range of 235 to 293 months. He filed an appeal from that sentence despite the appeal waiver in his plea agreement. The government now moves to enforce that waiver under *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (en banc). Mr. Derrick has filed a response through counsel in

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

which he identifies the three factors from *Hahn* that this court considers when deciding whether to enforce an appeal waiver: (1) whether the appeal falls within the scope of the waiver, (2) whether the waiver was knowing and voluntary, and (3) whether enforcing the waiver would result in a miscarriage of justice, *id.* at 1325. He concedes that his “waiver satisfies the concerns that must be addressed in *Hahn*,” Resp. at 23, discusses separately how each of the three *Hahn* factors are satisfied in his case, *see id.* at 23-26 and concludes by stating that the waiver in his plea agreement is “unquestionably enforceable,” *id.* at 26. Based on Mr. Derrick’s concession that his appeal waiver is enforceable, we grant the government’s motion and dismiss this appeal.

Entered for the Court
Per Curiam